

Challenging a Will in Ontario

Grounds, Deadlines, and the Estate Litigation Process

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When a Will Can Be Challenged

Not every Will that seems unfair can be challenged. Ontario courts respect testamentary freedom — the right to leave assets to whoever you choose. But that right has limits. A Will can be contested on specific legal grounds, and the evidence bar is high.

Lack of testamentary capacity: The person making the Will must understand what a Will is, what assets they have, who their natural beneficiaries are, and what they're signing. Cognitive decline at the time of signing can raise capacity questions.

Undue influence: If someone pressured or manipulated the testator into making a Will that doesn't reflect their actual wishes, that Will may be invalid. Courts require evidence that the influence replaced the testator's own judgment.

Improper execution: A Will must be signed in the presence of two witnesses, neither of whom is a beneficiary. Technical failures in execution can invalidate the document.

Fraud or forgery: If the signature is forged, or the testator was deceived into signing something they didn't understand, the Will can be challenged.

Dependent Support Claims

Even if a Will is valid, a spouse, child, or parent who was financially dependent on the deceased may apply for a larger share of the estate under Ontario's Succession Law Reform Act. This is separate from challenging validity — it's a claim that the Will failed to adequately provide for a dependant.

Dependent support claims must be filed within 6 months of a Certificate of Appointment of Estate Trustee (probate) being granted. Missing this deadline is generally fatal to the claim.

Power of Attorney Disputes

If you suspect an attorney for property is misusing their authority — depleting assets, making gifts to themselves, or acting outside their legal authority — you can apply to court to have the attorney removed and compelled to account for their actions.

The Litigation Process in Waterloo Region

Estate disputes are heard in the Superior Court of Justice — for Waterloo Region estates, the relevant courthouse is in Kitchener. The process typically begins with a Notice of Objection, which delays probate while the dispute proceeds. Many estate disputes settle before trial, but your position early on determines your leverage.

Farhood Shamji Lawyers handles Will challenges, Power of Attorney disputes, guardianship applications, and estate accounting disputes. The firm advises both those challenging an estate and those defending the validity of a Will.

Speak with a Waterloo Lawyer

Farhood Shamji Lawyers serves clients in Waterloo, Kitchener, and Cambridge. To schedule a consultation:

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